

**Application of City of Lewistown
Water Reservation No. 72584-41S**

II. FINDINGS OF FACT

A. FINDINGS ON THE QUALIFICATION OF THE CITY OF LEWISTOWN TO RESERVE WATER (Mont. Code Ann. § 85-2-316(1)(1991); ARM 36.16.107B(1)(a).)

1. The City of Lewistown is an incorporated municipality and a subdivision of the State of Montana. (Bd. Exh. 1-A, p. 1; Mont. Code Ann. § 85-2-316(1), ARM 36.16.107B(1)(a).)

2. The City of Lewistown has applied for a water reservation of 2,966 acre-feet/year (af/yr) of water with a maximum diversion rate of 3.57 cubic feet/second (cfs) to be diverted from Big Spring Creek for year round use. (Bd. Exh. 1-A, p. 3.)

3. The City of Lewistown requested a water reservation to meet future demands by municipal and industrial users. (Bd. Exh. 1-A, p. 3.)

B. FINDINGS ON THE PURPOSE OF THE WATER RESERVATION APPLIED FOR BY THE CITY OF LEWISTOWN (Mont. Code Ann. § 85-2-316(4)(a)(1991); ARM 36.16.107B(1)(b).)

4. The City of Lewistown seeks to provide municipal water for future growth in a cost-effective manner. Sound planning requires providing all users with an adequate water supply. The term of the water reservation is to year 2025. (Bd. Exh. 1-A, p. 3.)

5. The purpose of the reservation is to provide the water for municipal and industrial uses. (Bd. Exh. 1-A, p. 3.) Municipal and industrial uses are beneficial uses of water in Montana. (Mont. Code Ann. § 85-2-102(2)(a), ARM 36.16.102(3); ARM 36.16.107B(1)(b).)

C. FINDINGS ON THE NEED FOR THE WATER RESERVATION APPLIED FOR BY THE CITY OF LEWISTOWN (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2).)

6. Big Spring Creek presently provides constant flows of high quality water to the City of Lewistown. (Bd. Exh. 1-C, pp. 2 and 6.) The reservation water requested would be delivered by the present distribution system after modifications and improvements. (Bd. Exh. 1-C, p. 5.)

7. A reservation is the only means to obtain an early priority date for water that will be needed to meet projected

municipal growth. In the future, water may be appropriated by competing agricultural, industrial, and instream users. (Bd. Exh. 40, p. 249; Bd. Exh. 1-A, pp. 7-10.)

8. It is important that the City of Lewistown have a water reservation to meet future municipal and industrial water demands in order for the community to prosper and develop. (Bd. Exh. 1-A, p. 42.)

9. Competing water uses may prevent the City of Lewistown from obtaining or perfecting a water use permit in the future. Without a reservation, the City of Lewistown may have to go through a costly process of buying or condemning existing water rights to meet increasing demands. (Bd. Exh. 40, p. 249.)

D. FINDINGS ON THE AMOUNT OF WATER NEEDED FOR THE WATER RESERVATION APPLIED FOR BY THE CITY OF LEWISTOWN (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)

10. The method of determining the amount of water requested for a water reservation by the City of Lewistown was based on a forecast of its future population to the year 2025 along with the estimated amount of water used per person. (Bd. Exh. 40, p. 236.) The methodology used by the City of Lewistown projected an average annualized (compounded population growth rate) of approximately 0.68 percent. (Bd. Exh. 40, p. 236.) The 1990 population of Lewistown was 6,051. (Bd. Exh. 40, p. 236.) Based on the 1980 census population of 7,104 people, the City of Lewistown's population forecast for the year 2025 was 9,618 people. (Bd. Exh. 1-C, p. 8.)

11. The 1990 census of 6,051 people indicates that Lewistown has lost about 15% of its population during the 1980s, and that the city population generally has been declining since a 1960 population peak of 7,408. (Bd. Exh. 1-C, p. 8.)

12. The City of Lewistown experiences approximately 2 million gallons per day water losses from leaks in its 10-mile long transmission pipeline from Big Springs. (Bd. Exh. 1-A, p. 31; Bd. Exh. 1-C, pp. 2-4.) However, it is not presently cost-effective to replace this leaking transmission pipeline. (Bd. Exh. 1-C, p. 5; Bd. Exh. 1-A, p. 46.) Installation of water meters will reduce daily per capita use rates by 20 to 30 percent (Bd. Exh. 1-A, p. 55.) Lewistown expects that its metering program and repairs of leaky pipelines within its distribution system will reduce future needs by 28 percent; from an average of 533 gallons per person daily to 382 gallons per person daily (Bd. Exh. 1-A, p. 32.) The City of Lewistown's water usage would remain substantially above typical basin per capita usage rates of 250 gallons per person daily. (Bd. Exh. 1-A, p. 27.)

13. Approximately 16% of the services (primarily commercial and industrial users) are metered at present. (Bd. Exh. 1-A, p. 27.) Lewistown is considering improvements in the city distribution system with a goal of 100% metering. (Bd. Exh. 1-A, p. 55.) The city currently requires metering for all new connections to the water system. (Bd. Exh. 1-C, p. 6.)

14. As described above, the water use efficiencies associated with the municipal and industrial uses by the City of Lewistown are reasonable. (ARM 36.16.107B(3)(b).)

15. No other cost-effective measure in addition to those listed above could be taken within the reservation term to increase the use efficiency by the City of Lewistown and lessen the amount of water required for the purpose of the reservation. (ARM 36.16.107B(3)(b).)

16. The City of Lewistown claims water rights of 9.05 million gallons per day (14.0 cfs) flows, and a total volume of 2,221 acre-feet volume. (Bd. Exh. 1-A, p. 33.)

17. The City of Lewistown's present peak use rate is slightly less than its water rights claims of 14.0 peak cfs. (Bd. Exh. 1-A, pp. 33-34.) The city will need a peak use rate of 15.1 cfs to serve a projected city population of 7,400 people (8,100 people in service area).

18. The City of Lewistown's projected needs will be 3,468 acre-feet per year to serve 7,400 residents (8,100 people in service area) who use an average of 382 gallons per person daily. (Bd. Exh. 1-A, p. 32.)

E. FINDINGS THAT THE WATER RESERVATION APPLIED FOR BY THE CITY OF LEWISTOWN IS IN THE PUBLIC INTEREST (Mont. Code Ann. § 85-2-316(4)(a)(iv)(1991); ARM 36.16.107B(4).)

19. Benefits of the City of Lewistown's water reservation were calculated on a willingness-to-pay basis. Lewistown used a \$1.50/1,000 gallons value. (Bd. Exh. 1-A, p. 50.) Helena municipal users are currently paying \$2.47/1,000 gallons. (Bd. Exh. 40, p. 253.)

20. The additional water provided by the water reservation will cost approximately \$0.57/1,000 gallons. (Bd. Exh. 1-C, p. 7.)

21. The direct benefits of the City of Lewistown's water reservation exceed the direct costs. (ARM 36.16.107B(4)(a).)

22. Indirect benefits of the City of Lewistown's reservation may include secondary economic benefits to the community and to the state, and expanding both the property and

income tax base from increased population. (Bd. Exh. 1-A, p. 52.)

23. Indirect costs of the reservation may include loss of opportunity for other development and increased administrative costs. While not quantified these costs are minor. (Bd. Exh. 1-A, p. 52.)

24. There is no significant adverse environmental impact associated with the use of the City of Lewistown's water reservation. (Bd. Exh. 1-C, p. 7.) The effects of individual municipal water reservation depletions on water quality have not been quantified (Bd. Exh. 40, pp. 253 - 254), but should be very small. Resulting health risks have not been quantified. No other non-quantifiable benefits or costs were identified. (Bd. Exh. 1-C.)

25. Net benefits of granting the City of Lewistown's water reservation exceed the net benefits of not granting the water reservation and the project is economically feasible. (ARM 36.16.107B(4)(b); ARM 36.16.102(9).)

26. The City of Lewistown identified two possible alternative sources of water for future development, a treatment plant at Big Spring Creek and deep wells. Neither of these alternatives would provide greater net benefits than the water reservation, (Bd. Exh. 1-A, pp. 50-52) and are not reasonable. (ARM 36.16.107B(4)(c).)

27. Failure to reserve water for future municipal and industrial use by the City of Lewistown is likely to result in an irretrievable loss of a resource development opportunity. (Bd. Exh. 1-C, p. 54; ARM 36.16.107B(4)(d).)

28. As conditioned, the City of Lewistown's water reservation will have no significant adverse impact to public health, welfare, or safety. (ARM 36.16.107B(4)(e).)

F. OTHER FINDINGS RELATING TO BOARD DECISION (Mont. Code Ann. § 85-2-316(3)(B), (4)(a)(iv)(b), (5), (6), and (9)(e)(1991); ARM 36.16.107B(5) through (8).)

29. The water reservation by the City of Lewistown will be used wholly within the state and within the Missouri River basin. (Bd. Exh. 1-A; ARM 36.16.107B(5) and (6).)

30. The City of Lewistown has identified a management plan for the design, development, and administration of its water reservation. (Bd. Exh. 1-A, pp. 56-66.)

31. The City of Lewistown is capable of exercising reasonable diligence towards feasibly financing the project and

applying reservation water to beneficial use in accordance with the management plan. (ARM 36.16.107B(7).)

32. The priority date of the City of Lewistown's water reservation is July 1, 1985. (Mont. Code Ann. § 85-2-331(4).)

33. As conditioned, the City of Lewistown's water reservation will not adversely affect any senior water rights. (ARM 36.16.107B(8).)

34. The public interest in protecting domestic and stockwater rights with a priority date on or after July 1, 1985 and perfected prior to the final date of this Order outweighs the values protected by the municipal reservations.

III. CONCLUSIONS OF LAW

1. City of Lewistown is a qualified applicant for a water reservation. (Mont. Code Ann. § 85-2-316(1)(1991).)

2. The purpose of the City of Lewistown's application is a beneficial use. (Mont. Code Ann. § 85-2-316(4)(a)(i)(1991); ARM 36.16.107B(1)(b).)

3. The need for the City of Lewistown has been established. Specifically, the City has established that there is a reasonable likelihood that future in-state competing water uses would consume the water available for the purpose of its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2).)

4. The methodologies and assumptions used by the City of Lewistown are suitable but not accurate under present conditions. (ARM 36.16.107B(3)(a).) A more accurate population projection for the year 2025 for the City of Lewistown is 7,400 persons based on an average annualized growth rate of .58 percent. As modified, the City of Lewistown has established the amount of water needed to fulfill its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)

5. Based on a weighing and balancing of the evidence, the reservation by the City of Lewistown as modified herein is in the public interest. (Mont. Code Ann. § 85-2-316(4)(a)(iv); ARM 36.16.107B(4).)

6. Upper Missouri River water reservations approved by the Board shall have a priority date of July 1, 1985. (Mont. Code Ann. § 85-2-331(4).) The Board may determine the relative priorities of all reservations. (Mont. Code Ann. § 85-2-316(a)(e).)

7. The Board may grant, deny, modify, or condition any reservation applied for. In no case may the Board make a reservation for more than the amount applied for. (Mont. Code Ann. § 85-2-316.)

8. The Board has no authority under the reservation statutes or any other statutes to determine, or alter, any water right that is not a reservation. (Mont. Code Ann. § 85-2-316(14).)

IV. ORDER

1. Subject to all applicable modifications, conditions, and limitations (including but not limited to the conditions applied to consumptive use reservations in Exhibits A and B attached to this Order) the application of the City of Lewistown is granted for the following amount and flow of water: 1.1 cfs and 1,247 af/year.

2. The point of diversion and place of use are from the well set forth in the reservation application City of Lewistown and by reference are made a part of this Order.

3. The reservation is adopted subject to being perfected by December 31, 2025.

4. Relative to other reservations the priority date of the reservation shall be ahead of any other non-municipal reservation granted with a priority date of July 1, 1985. The reservation shall have equal priority with all other reservations granted to all municipalities.

5. Any and all liability arising from the reservation or the use of the reservation is the sole responsibility of the applicant. By granting such reservations, the Board on behalf of itself and the Department of Natural Resources and Conservation assumes no liability.